

## **REMARKS**

Claims 1-18 are now pending in the application. Claims 6 and 11 are allowed. With respect to the remaining claims, the Examiner is respectfully requested to reconsider and withdraw the rejections in view of the remarks contained herein.

### **REJECTION UNDER 35 U.S.C. § 103**

Claims 1-4, 7-9 and 13-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kubota et al. (U.S. Pat. No. 2002/0171792). This rejection is respectfully traversed.

Applicants respectfully submit that the Kubota et al. reference is not prior art. The Kubota et al. reference is a U.S. published application with a publication date of November 21, 2002. The Kubota et al. reference is a U.S. filing of a PCT application filed September 27, 2001. Applicants filing date is February 5, 2002.

As the Examiner is aware, 35 U.S.C. § 102(e) governs whether or not the Kubota et al. reference is prior art to Applicants application. Because the PCT priority document of the Kubota et al. reference was filed after November 29, 2000 and was filed in Japanese, not English, the Kubota et al. reference is not entitled to the benefit of a § 102(e) priority date. Thus, the Kubota et al. reference is only prior art as of its U.S. publication date, November 21, 2002. Applicants' application was filed in the U.S. on February 5, 2002, which predates the November 21, 2002 priority date of the Kubota et al. reference and eliminates the Kubota et al. reference as prior art. Therefore, Applicants' respectfully request that the Examiner reconsider and withdraw the Section 103 rejections.

#### **DOUBLE PATENTING REJECTION**

Claims 2, 5 and 17 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1 and 2 of co-pending Application No. 09/865,046.

Applicants respectfully disagree with this rejection. However, to expedite prosecution of this matter, Applicants file herewith a terminal disclaimer in compliance with 37 CFR 1.321(c) to overcome this rejection. Therefore, Applicants respectfully request that this rejection be reconsidered and withdrawn.

#### **ALLOWABLE SUBJECT MATTER**

Applicants thank the Examiner for allowing Claims 6 and 11.

**CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By: 

G. Gregory Schivley  
Reg. No. 27,382  
Bryant E. Wade  
Reg. No. 40,344

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

BGS/kq